



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523-0119; RTID 0648-XC483]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category December Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring a total of 57.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from both the Reserve category and the Harpoon category to the General category for the remainder of the 2022 fishing year. With this transfer, the adjusted General category December subquota, Reserve category quota, and Harpoon category quota will be 50.1 mt, 6 mt, and 76.4 mt respectively. This action accounts for the accrued overharvest from previous 2022 General category time period subquotas, and will further opportunities for General category fishermen to participate in the December General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective December 1, 2022, through December 31, 2022.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General, Reserve, and Harpoon category quotas are 587.9 mt, 29.5 mt, and 48.7 mt respectively. The General category baseline quota is further suballocated to different time periods. Relevant to this action, the baseline subquota for the December time period is 30.6 mt. On December 23, 2021 (86 FR 72857), NMFS transferred 19.5 mt of BFT quota from the December 2022 subquota time period to the January through March 2022 subquota time period, resulting in an adjusted subquota of 9.4 mt for the December 2022 time period. This adjusted subquota was subsequently adjusted to 11.1 mt via a final rulemaking that adjusted the overall quota (87 FR 33049, June 1, 2022).

To date for 2022, NMFS has published several actions that adjusted the Reserve and Harpoon category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022; 87 FR 54910, September 8, 2022; 87 FR 60938, October 7, 2022). The current adjusted Reserve and Harpoon category quotas are 61.2 mt and 78.7 mt,

respectively. Per § 635.27(a)(5), the Harpoon category fishery closed for the year on September 5, 2022 (87 FR 54912, September 9, 2022). At that time, 2.3 mt of the Harpoon category quota remained unharvested.

Quota Transfer Calculations

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). This section focuses on the various calculations involved in transferring quotas; the consideration of the determination criteria can be found below after this section.

To date, preliminary landings data indicate that the General category landed 836.8 mt through November 30, 2022. This amount exceeds the cumulative adjusted quota available through November 30 (818.3 mt) by 18.5 mt ($836.8 \text{ mt} - 818.3 \text{ mt} = 18.5 \text{ mt}$).

As stated above, the adjusted Reserve category quota is 61.2 mt. The quota in the Reserve category is held in reserve for inseason or annual adjustments and research. Under § 635.24(a)(7), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota. Transferring 55.2 mt from the Reserve category would account for the 18.5 mt accrued overharvest from the prior time periods. This transfer would result in 36.7 mt being available for the General category December subquota time period ($55.2 \text{ mt} - 18.5 \text{ mt} = 36.7 \text{ mt}$). Transferring 55.2 mt out of the Reserve category would leave 6 mt in the Reserve category ($61.2 \text{ mt} - 55.2 \text{ mt} = 6 \text{ mt}$), which could be used to account for any BFT mortalities associated with research.

Additionally, preliminary landings data indicate that the Harpoon category landed 76.4 mt of the 78.7 mt adjusted Harpoon category quota before closing. Because the Harpoon category closes on November 15 of each year (§ 635.24(a)(5)) and closed this year on September 5, 2022 (87 FR 54912, September 9, 2022), the remaining quota of 2.3

mt ($78.7 \text{ mt} - 76.4 \text{ mt} = 2.3 \text{ mt}$) is available and could be used by the General category. Transferring 2.3 mt out of the Harpoon category would result in an adjusted Harpoon category quota of 76.4 mt.

Given the current adjusted quota for the December time period is 11.1 mt, these transfers from the Reserve and Harpoon categories would result in an adjusted December subquota of 50.1 mt ($11.1 \text{ mt} + 36.7 \text{ mt} + 2.3 \text{ mt} = 50.1 \text{ mt}$). The transfers also would result in adjusted quotas for the Reserve and Harpoon categories of 6 mt and 76.4 mt, respectively.

Consideration of the Relevant Determination Criteria

As described below, NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. Given these considerations, after transferring a total of 57.5 mt (55.2 mt from the Reserve category quota and 2.3 mt from the Harpoon category quota), the adjusted General category December 2022 subquota will be 50.1 mt, the adjusted Reserve category quota will be 6 mt, and the adjusted Harpoon category quota will be 76.4 mt. The General category fishery will remain open until December 31, 2022, or until the adjusted General category quota is reached, whichever comes first.

In making these transfers, NMFS considered, among other things, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As described above, preliminary landings data indicate that the General category has landed 836.8 mt through November 30, which exceeds the cumulative adjusted quota available through November 30 by 18.5 mt. While the General category December time period subquota has not yet been exceeded, without a quota transfer at this time, based on catch rates in the last 3 years in comparison to the current available quota (11.1 mt), NMFS anticipates it would likely need to close the General category fishery very early in December. Once the fishery is closed, participants would have to stop BFT fishing activities even though commercial-sized BFT remain available in the areas where General category permitted vessels operate and U.S. BFT quota is available. Transferring quota from the Reserve and Harpoon categories would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that General category participants will be able to harvest transferred BFT quota by the end of the subquota time period and end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings

have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carry over the allowable 127.3 mt of underharvest from 2021 to 2022 (87 FR 33049, June 1, 2022). NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the transfer on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Atlantic Consolidated FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21-07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and

retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*, by using the HMS Catch Reporting app, or calling 888-872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at 978-281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on the quota transfer for the December 2022 time period is impracticable. The General category fishery is underway, there was an exceedance of

prior subquota time periods. While the December subquota has not yet been exceeded, NMFS anticipates that it will need to close the General category in December even with the transfer. Delaying the action is contrary to the public interest, not only because it would likely result in a premature General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve and Harpoon categories to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: November 22, 2022.

Kelly Denit,

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